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S. Matthew Schultz, Robert P. Beynon, Larry McNeill, and
Thomas L. Wood, and Nominal Defendant Cleanspark, Inc.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRANDON SMITH, Derivatively on Behalf of
CLEANSPARK, INC.,
Plaintiff,

Case No.: _____

v.

ZACHARY K. BRADFORD, LORI L. LOVE,
S. MATTHEW SCHULTZ, LARRY
MCNEILL, THOMAS L. WOOD, and
ROGER P. BEYNON,
Defendants,

PETITION FOR REMOVAL

-and-

CLEANSPARK, INC., a Nevada Corporation,
Nominal Defendant.

Without submitting to the jurisdiction of this Court and without waiving any available defenses, including without limitation, lack of jurisdiction, improper venue, or insufficient service of process, defendants Zachary K. Bradford, Lori L. Love, S. Matthew Schultz, Larry McNeill, Thomas L. Wood, and Roger P. Beynon (the “Individual Defendants”), by and through their undersigned counsel, hereby remove this action from the Eighth Judicial District Court of the State of Nevada, County of Clark, where it is currently pending, to this Court. As required under 28 U.S.C. § 1446(a), the Individual Defendants set forth below a short and plain statement of the grounds for removal:

1 1. On or about March 1, 2023, Plaintiff Brandon Smith (“Plaintiff”), derivatively on
 2 behalf of nominal defendant, CleanSpark, Inc. (the “Company,” and together with the Individual
 3 Defendants, the “Defendants”), commenced an action entitled *Smith v. Bradford et al.*, Case No.
 4 A-23-866051-C, in Department 8 of the Eighth Judicial District Court of the State of Nevada,
 5 County of Clark, by the filing of a Verified Complaint (the “Complaint”).

6 2. The Complaint relies heavily on a January 14, 2021 “report” by an anonymous
 7 short-seller called “Culper Research”¹ and two previously-filed lawsuits: (i) a derivative action
 8 pending in the United States District Court for the District of Nevada, *In re CleanSpark, Inc.*
 9 *Derivative Litigation*, No. 21-cv-01004 (GMN) (the “Derivative Action”), and (ii) a securities
 10 class action pending in the United States District Court for the Southern District of New York,
 11 *Bishins v. CleanSpark, Inc. et al.*, No. 21-cv-511 (LAP), (the “Class Action” and together with
 12 the Derivative Action, the “Prior Actions”). The allegations in the Complaint are virtually
 13 identical to the allegations in the complaints filed in the Prior Actions.

14 3. Specifically, the Complaint alleges that certain of the Company’s officers and
 15 directors breached their fiduciary duties to the Company and its shareholders by purportedly
 16 making false or misleading misstatements or omissions concerning: (i) the Company’s due
 17 diligence of a bitcoin mining company it acquired called ATL Data Centers, Inc. (“ATL”), (ii)
 18 the nature and history of ATL’s bitcoin mining assets, and (iii) the Company’s ability to
 19 implement the “first phase” of improving the ATL facility in accordance with its publicly
 20 disclosed timeline. (Complaint ¶¶ 5–7, 9–12).

21 4. Plaintiff alleges that the Company was purportedly damaged by the foregoing acts
 22 or omissions. (Complaint ¶¶ 166, 169).

23 5. The Notice of Removal is being filed by the Individual Defendants within thirty
 24 (30) days of the receipt of a copy of the Complaint and is timely filed pursuant to 28 U.S.C. §§
 25 1441, 1446.

26 6. The Individual Defendants, including any individual defendant that is a citizen of

27
 28 ¹ Defendants reject the statements in this so-called “report,” which is a transparent effort by an admitted short-seller
 to depress the Company’s stock price for its own benefit.

Nevada, verbally agreed to accept service of the Complaint on March 7, 2023. Nominal Defendant CleanSpark, Inc. was served on February 28, 2023.

7. The Individual Defendants' time to move, answer, or otherwise respond to the Complaint has not expired.

8. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, as Plaintiff's claims turn on substantial questions of federal law. *See Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005); *Gunn v. Minton*, 586 U.S. 251 (2013).

9. Written notice of the filing of the Notice of Removal shall be given to Plaintiff, and the Individual Defendants shall file the notice with the Clerk of the Eighth Judicial District Court of the State of Nevada, County of Clark, as required by law.

10. Defendants have not answered, moved, or otherwise responded to the Complaint, and no other proceedings have occurred heretofore in this action.

11. No previous application for the relief requested herein has been made previously.

12. Attached as **Exhibit 1** to this Petition is a true and correct copy of the Verified Stockholder Derivative Complaint for Breach of Fiduciary Duty and Unjust Enrichment, which comprises all of the pleadings in this matter.

WHEREFORE, the Individual Defendants give notice that the matter bearing Case No. A-23-866051-C, in Department 8 of the Eighth Judicial District Court of the State of Nevada, County of Clark, is removed to the United States District Court for the District of Nevada, and request that this Court retain jurisdiction for all further proceedings in this matter.

DATED: March 23, 2023

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

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Wood and Nominal Defendant Cleanspark, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fox Rothschild LLP and that on the 23rd day of March 2023, pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I served a true and correct copy of the foregoing **PETITION FOR REMOVAL** via electronic transmission.

/s/ Deborah L. Pressley
An employee of Fox Rothschild LLP